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JENAE HEITKAMP

ELECTRONICALLY
FILED
Superior Court of California, County of San Francisco
06/09/2025
Clerk of the Court
BY: SHENEQUA GLADNEY
Deputy Clerk

CGC-25-626072

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

JENAE HEITKAMP, on behalf of herself, and all aggrieved employees, Plaintiff, v. BRIGHTSIDE HEALTH, INC., and DOES 1 through 50, inclusive, Defendants.	Case No: <u>REPRESENTATIVE ACTION</u> **REPRESENTATIVE ACTION COMPLAINT FOR:** **1. VIOLATIONS OF THE LABOR CODE;** **2. PENALTIES; and** **3. ATTORNEYS' FEES.**

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Plaintiff JENAE HEITKAMP, on behalf of herself and all aggrieved employees, complains against Defendants BRIGHTSIDE HEALTH, INC., and Does 1 through 50 (all referred to collectively as "Defendants" or "BRIGHTSIDE") as follows:

I. JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over Plaintiff's claims, based on, among other statutes, California Labor Code §§ 201-203, 204, 226(a), 226.2, 226.3, 226.7, 226.8, 432.5, 510, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802. Plaintiff has complied with all California Labor Code § 2699.3 requirements for commencing a civil action under the California Private Attorneys General Act of 2004, California Labor Code §§ 2698, *et seq.* ("PAGA").

2. Plaintiff is not suing in her individual capacity. Plaintiff is proceeding herein solely under PAGA in a representative capacity on behalf of the State of California for all aggrieved employees, including herself and other aggrieved employees.

3. This Court has personal jurisdiction over the parties because, at all relevant times, Plaintiff was a California resident who worked in California for Defendants and Defendants systematically and continuously have conducted business in the State of California.

4. Venue is proper in this Court under California Code of Civil Procedure § 395.5 because Defendants' principal place of business listed on its most recent Statement of Information filed with the California Secretary of State is 5214F Diamond Heights Boulevard # 3422, San Francisco, California 94131.

II. PARTIES AND BACKGROUND

5. Plaintiff JENAE HEITKAMP worked for BRIGHTSIDE as a purported independent contractor therapist from approximately February 2023 through January 2025 in Orange County, California.

6. Defendant BRIGHTSIDE HEALTH, INC. is a Delaware limited liability company doing business throughout California and is a "person" as defined by California Labor Code § 18 and California Business and Professions Code § 17201. In addition, it is an "employer" as that term is used in the California Labor Code and in the California Industrial Welfare Commission's Orders regulating wages, hours, and working conditions.

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7. Plaintiff is ignorant of the true names and capacities of Defendants sued as Does 1 through 50, inclusive, and therefore sues those Defendants by those fictitious names. Plaintiff will amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes and, on that ground, alleges that each of the fictitiously-named Defendants is responsible in some manner for the occurrences alleged and that Plaintiff's damages and other losses as alleged are proximately caused by those occurrences.

8. On behalf of the State of California and all aggrieved employees who worked as purported independent contractor therapists in California to challenge Defendants' (a) policy and practice of misclassifying therapists as "independent contractors," (b) policy and practice of failing to pay any wages whatsoever, including the minimum wage, to therapists, for all hours worked; (c) policy and practice of violating California Labor Code § 510 and IWC Wage Order 4-2001 by failing to pay overtime wages to employees who worked more than eight hours in a day or 40 hours in a week; (d) policy and practice of violating California Labor Code § 226.7 and IWC Wage Order 4-2001 by failing to authorize and permit paid rest periods to therapists; (e) policy and practice of violating California Labor Code § 226 by failing to provide therapists complete and accurate itemized wage statements; (f) policy and practice of violating California Labor Code §§ 201-203 by failing to pay former therapists all wages due and owing at the time of discharge or voluntary quit, and (g) policy and practice of violating California Labor Code § 2802 and IWC Wage Order 4-2001 failing to reimburse therapists for all necessary expenditures and losses incurred at the direction of Defendants.

III. FACTUAL ALLEGATIONS

9. This is a representative action under Labor Code §§ 2698, *et seq.*, seeking relief from Defendant's affirmative decision to misclassify BRIGHTSIDE's therapists as "independent contractors." By misclassifying the therapists as independent contractors, Defendants have sought to increase their profits while avoiding various duties and obligations owed to employees under the Labor Code and the applicable Industrial Welfare Commission ("IWC") Wage Order. Plaintiff seeks PAGA penalties interest, attorneys' fees, costs, and other sums for violations of the Labor Code.

10. BRIGHTSIDE provides remote therapy services throughout California. BRIGHTSIDE utilizes purported independent contractor therapists to provide such services.

11. At all relevant times to this action, Plaintiff performed work for BRIGHTSIDE as a purported independent contractor therapist. Plaintiff typically worked five to six days a week, typically six to eight hours a day. Plaintiff also worked certain days and weeks that had evening and weekend appointments with patients, resulting in her working over eight hours day or 40 hours in a week.

12. **<u>ABC Test Does Not Apply</u>:** On April 30, 2018, the California Supreme Court adopted the ABC test to determine whether a worker should be classified as an employee or an independent contractor. *Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal. 5th 903. The California government then codified the ABC test as Labor Code § 2750.3, which was then repealed and replaced by Labor Code § 2775.

13. The California government has also adopted numerous exceptions to the ABC test. One such exception applies here under Labor Code § 2783(b) for psychologists licensed by the State of California that perform professional or medical services provided to or by a health care entity. This exception to the ABC test applies here, however that does not end the inquiry. Labor Code § 2783 specifically states that an exception under this section applies, the classification will be determined under the previous multi-factor test established by the California Supreme Court in *S.G. Borello & Sons, Inc. v Department of Industrial Relations* (1989) 48 Cal.3d 341 ("*Borello*"). As such, the *Borello* test applies here.

14. **<u>Borello Test:</u>** Under *Borello,* a court first examines whether the alleged employer has the "right to control" the work performed. *Id.* at 350. Here, acting in accordance with its written agreements with Plaintiff and other aggrieved employees, BRIGHTSIDE exercises thorough and complete control over the therapists.

15. BRIGHTSIDE exercised control over Plaintiff's schedule by automatically assigning her patients during certain hours through its online intranet portal. Plaintiff had to reach out to HR to change her schedule. In approximately October 2024, BRIGHTSIDE changed its scheduling practices and Plaintiff and other aggrieved employees were able to click their

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availability hour by hour to insert patients into their schedule. Additionally, BRIGHTSIDE required Plaintiff and other aggrieved employees to work a minimum of nine hours per week.

16. BRIGHTSIDE also controls the rates that are charged, Plaintiff and other aggrieved employees could not set or negotiate their own rates.

17. BRIGHTSIDE also exercises control by requiring therapists to engage in mandatory training through a website called rippling. This training was monthly, it included sessions for compassionate care, culturally responsive care, fraud, waste, and compliance. The training was entirely unpaid until approximately January 2025, when BRIGHTSIDE began paying aggrieved employees approximately $150 per year for training. This was not enough to cover the time spent training.

18. BRIGHTSIDE also required Plaintiff and other aggrieved employees to utilize its website, as well as the messaging application slack. BRIGHTSIDE also required Plaintiff and other aggrieved employees to utilize its form of paperwork for patient case notes and treatment plans, which needed to be submitted within time frames dictated by BRIGHTSIDE.

19. *Borello* also held that, after examining the right to control, a court should look at "secondary factors" that include: 1) whether the person performing services is engaged in a distinct occupation or business, 2) the skill required in the particular occupation, 3) whether the work is part of the regular business of the principal, and 4) the method of payment, whether by the time spent or by the job. *Id.* at 351.

20. Here, Plaintiff and the other aggrieved employees were not involved in a distinct occupation or business. BRIGHTSIDE provides online therapy sessions. Plaintiff and the other aggrieved employees are the labor force that provide those services. For the same reason, the work performed by Plaintiff and the other aggrieved employees is part of the regular business of the principal: they are simply the labor force that provides the therapy services *to BRIGHTSIDE's clients*. Additionally, the method of payment favors employee status as well. Plaintiff and the other aggrieved employees are paid per session, similar to an employer-employee relationship.

21. *Borello* also approvingly cited five factors adopted in other jurisdictions. Those

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factors include: (1) the alleged employee's opportunity for profit or loss depending on his/her managerial skill, (2) the alleged employee's investment in equipment or materials required by his task, or his employment of helpers, (3) whether the service rendered requires a special skill, (4) the degree of permanence of the working relationship, and (5) whether the service rendered is an integral part of the alleged employer's business. *Id.* at 354-355.

22. Here, there is no true opportunity for profit or loss, as BRIGHTSIDE performs all of the negotiating with its clients, including the price of services. With regard to the aggrieved employees' investment in equipment and materials, BRIGHTSIDE provides the technology platform to conduct the online therapy sessions, as well as to schedule clients and submit paperwork.

23. BRIGHTSIDE then offsets its business costs by requiring Plaintiff and other aggrieved employees to utilize their own tools and materials for the job. Plaintiff and other aggrieved employees were required to use their own personal computer and home internet services, and well as utilize their personal cellular telephones and associated service plans for work purposes. BRIGHTSIDE did not allow them to submit reimbursement requests for such expenses.

24. The degree of permanence of the working relationship also favors employee

25. **Claims:** SOS violates Labor Code §§ 226.2, 226.7, 510, 1194, 1194.2, 1197, 1197.1, 1198 and 1199, and IWC Wage Order 4-2001, by failing to pay Plaintiff and other aggrieved employees the applicable minimum wage and overtime pay for all hours worked.

26. Defendants paid Plaintiff and other aggrieved employees per session. Defendants did not pay Plaintiff and other aggrieved employees for time spent filling out its "Case Notes" form which takes up to 30 minutes a day. Defendant also required that aggrieved employees fill out separate "treatment plans" every six months that take approximately 10 minutes to fill out. This is extremely time consuming when considering the number of Brightside's clients that aggrieved employees serve. For example, Plaintiff had approximately 125 patients, she therefore had to fill out approximately 250 treatment a year. This would mean she Plaintiff has over a

week of unpaid time just for filling out treatment plans.[1]

27. Defendants required Plaintiff and other aggrieved employees had to undergo mandatory training of 30 minutes to an hour or more each month. Defendants did not pay for training time until approximately January 2025, when it began paying a flat amount per year.

28. Defendants also required Plaintiff and other aggrieved employees to respond to emails and slack messages, but did not pay for this time.

29. Plaintiff and other aggrieved employees had to fill out items requested by attorneys for Defendants' clients, for example cases involving child custody, workers compensation, or stress leave. This time was unpaid. Defendants also required Plaintiff and other aggrieved employees also had to consult with psychiatrists regarding patient issues, which was also unpaid.

30. At all times relevant hereto, Labor Code § 226.7 and the applicable IWC Wage Order have required employers to authorize and permit a paid rest break of at least 10 minutes for every four hours of work performed or major fraction thereof. An employee working over ten hours in a single day workday is owed three paid rest breaks of at least 10 minutes. Defendants implemented a policy and practice of intentionally and improperly designating Plaintiff and other aggrieved employees as independent contractors in order to avoid permitting and authorizing paid rest breaks and/or paying rest break premiums for such paid rest breaks not provided, in violation of the Labor Code and applicable IWC Wage Order.

31. Additionally, BRIGHTSIDE paid Plaintiff and other aggrieved employees on a piece rate basis for sessions conducted. Rest breaks are paid time and pursuant to Labor Code §§ 226.2 and 226.7, they should be paid separately for workers paid on a piece rate basis. Defendants never did so, in violation of these sections.

32. Labor Code § 226 provides that every employer is required, "semimonthly or at

[1] Plaintiff had to spend 41.66 hours a year filling out treatment plans, which is calculated as follows: 10 (minutes per treatment plan) x 125 (patients) x 2 (times per year treatment plans are submitted) = 2,500 minutes. 2,500 (minutes) / 60 (minutes in an hour) = 41.66 unpaid hours spent per year filling out mandatory treatment plans.

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the time of each payment of wages," to provide each employee an itemized wage statement, including, *inter alia,* the total hours worked by the employee (except for salaried employees), and "all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee." Lab. Code § 226(a). Defendants did not provide wage statements at all in violation of Lab. Code §§ 226(a) and 226.3.

33. Defendants implemented a policy and practice of violating California Labor Code §§ 201- 203 by failing to pay Plaintiff and other aggrieved employees all wages due and owing at the time of discharge or voluntary quit. Defendants also violated Labor Code § 204 by failing to pay Plaintiff and other aggrieved employees within the time frames required by that section.

34. Defendants implemented a policy and practice of failing to reimburse Plaintiff and other aggrieved employees for necessary expenditures and losses as required by Labor Code § 2802 and the applicable Wage Order. Plaintiff and other aggrieved employees have also been required to have a cellular telephone and home internet service. Plaintiff and other aggrieved employees have not received full reimbursement and/or indemnity for all necessary expenditures or losses incurred in connection with the purchase of the items above.

IV. REPRESENTATIVE ACTION ALLEGATIONS

35. Plaintiff seeks to represent all aggrieved employees within the meaning of Labor Code §§ 2698, *et seq.* who, within the applicable limitations period, up to the present and until compliance with the law, performed work in California.

36. On behalf of all aggrieved employees, Plaintiff seeks all PAGA penalties under Labor Code §§ 226.3 and 2699(f), as applicable, for each violation of Labor Code, including:

(a) §§ 226.7, 1194, 1194.2, 1197, 1197.1, 1198 and 1999 and the applicable IWC Wage Order (failure to pay minimum wages and overtime);

(b) §§ 226.2, 226.7, 1198 and 1199 and the applicable IWC Wage Order (failure to provide rest breaks);

(c) §§ 226(a) and 226.3 (failure to provide itemized wage statements);

(d) §§ 201-203 (failure to pay wages upon termination);

(e) § 204 (failure to pay wages in a timely manner);

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(f) § 2802 (failure to reimburse business expenses);

(g) § 226.8 (willful misclassification of employees as independent contractors); and

(h) § 432.5 (requiring employees to agree to unlawful terms and conditions).

37. The State of California has an enforcement interest in the questions of law and fact affecting the aggrieved employees whom Plaintiff seeks to represent. The aggrieved employees' claims against Defendants involve questions of common or general interest, including but not limited to whether Defendants: (1) violated the Labor Code and the applicable IWC Wage Order by failing to pay any wages, including minimum wages and overtime, to aggrieved employees workers for various hours worked, including wages compensable pre- and post-shift activities; (2) violated the Labor Code and the applicable IWC Wage Order by failing to authorize and permit aggrieved employees to take all of their required paid rest breaks and failing to pay the required missed-rest-break premium for each paid rest break not allowed or permitted; (3) violated Labor Code §§ 226 and 226.3 by failing to provide aggrieved employees with accurate and itemized wage statements; (4) violated Labor Code §§ 201-203 by failing to pay departing aggrieved employees all wages due at the time of discharge or voluntary quit; (5) violated Labor Code § 204 by failing to pay aggrieved employees their wages in a timely manner as required by that section; and (6) violated Labor Code § 2802 by failing to reimburse aggrieved employees for all necessary expenditures and losses incurred in the direct consequence of the discharge of their duties.

38. Plaintiff's claims are typical of the claims of the aggrieved employees whom Plaintiff seeks to represent on a representative basis and her interests are consistent with, and not antagonistic to, those of the other aggrieved employees. Plaintiff will fairly and adequately represent the interests of the aggrieved employees whom she seeks to represent because Plaintiff is also an aggrieved employee and her claims are typical of those of the aggrieved employees. Plaintiff has retained attorneys who are experienced in the prosecution of representative actions and Plaintiff intends to prosecute this action vigorously.

39. Common questions of law and fact exist as to all aggrieved employees that

predominate over any other questions affecting only individual aggrieved employees.

40. Plaintiff requests permission to amend the Complaint to include additional representatives if Plaintiff is deemed not to be an adequate representative of the aggrieved employees.

V. FIRST CAUSE OF ACTION

(UNPAID WAGES, OVERTIME PAY AND MINIMUM WAGES – LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004)

41. Plaintiff repeats and realleges each paragraph above as though fully set forth herein.

42. California Labor Code § 2699(f) permits "aggrieved employees" to recover certain penalties on their own behalf and on behalf of other current and former employees.

43. Plaintiff is an "aggrieved employee" as that term is defined in the Labor Code Private Attorneys General Act of 2004 because she is a person who was employed by the alleged violators and against whom one or more of the alleged violations were committed.

44. Plaintiff has met all the Labor Code § 2699.3 requirements to commence a civil action against Defendants for violations of Labor Code §§ 510, 1194, 1194.2, 1197, 1197.1, 1198 and 1199 as well IWC Wage Order No. 4.

45. By the actions alleged in this complaint, Defendants failed to pay Plaintiff and other aggrieved employees any wages, including minimum wages and overtime pay, for certain hours worked, all in violation of Labor Code §§ 510, 1194, 1194.2, 1197, 1197.1, 1198 and 1199 as well as IWC Wage Order No. 4

46. Therefore, Plaintiff, on behalf of and all current and former aggrieved employees, demands the penalties provided by Labor Code § 2699(f) for violations of Labor Code §§ 510, 1194, 1194.2, 1197, 1197.1, 1198 and 1199 as well as IWC Wage Order No. 4.

47. Plaintiff further seeks reasonable attorneys' fees and costs under Labor Code § 2699(g)(1).

Wherefore, Plaintiff prays for relief as set forth below.

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VI. <u>SECOND CAUSE OF ACTION</u>

(FAILURE TO AUTHORIZE AND PERMIT REST PERIODS – LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004)

48. Plaintiff repeats and realleges each paragraph above as though fully set forth herein.

49. California Labor Code § 2699(f) permits "aggrieved employees" to recover certain penalties on their own behalf and on behalf of other current and former employees.

50. Plaintiff is an "aggrieved employee" as that term is defined in the Labor Code Private Attorneys General Act of 2004 because she is a person who was employed by the alleged violators and against whom one or more of the alleged violations was committed.

51. Plaintiff has met all the Labor Code § 2699.3 requirements to commence a civil action against Defendants for violations of Labor Code §§ 226.2, 226.7, 1198 and 1199 and IWC Wage Order No. 4.

52. By the actions alleged herein, Defendants failed to authorize and permit aggrieved employees to take their required rest periods in violation of Labor Code §§ 226.2, 226.7, 1198 and 1199 and IWC Wage Order No. 4.

53. Therefore, Plaintiff, on behalf of and all current and former aggrieved employees, demands the penalties provided by Labor Code § 2699(f) for violations of Labor Code §§ 226.2, 226.7, 1198 and 1199 and IWC Wage Order No. 4.

54. Plaintiff further seeks reasonable attorneys' fees and costs under Labor Code § 2699(g)(1).

Wherefore, Plaintiff prays for relief as set forth below.

VII. <u>THIRD CAUSE OF ACTION</u>

(FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS – LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004)

55. Plaintiff repeats and realleges each paragraph above as though fully set forth herein.

56. California Labor Code § 2699(f) permits "aggrieved employees" to recover

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certain penalties on their own behalf and on behalf of other current and former employees.

57. Plaintiff is an "aggrieved employee" as that term is defined in the Labor Code Private Attorneys General Act of 2004 because she is a person who was employed by the alleged violators and against whom one or more of the alleged violations was committed.

58. Plaintiff has met all the Labor Code § 2699.3 requirements to commence a civil action against Defendants for violations of Labor Code §§ 226(a) and 226.3.

59. By the actions alleged herein, Defendants have failed to comply with Labor Code § 226(a) as it relates to Plaintiff and the other aggrieved employees. As alleged above, BRIGHTSIDE employs a policy and practice of failing to provide complete and accurate itemized wage statements to Plaintiff and other aggrieved employees as required by Labor Code § 226(a). In fact, Defendants did not provide any wage statements at all.

60. Therefore, Plaintiff, on behalf of and all current and former aggrieved employees, demands the Labor Code § 226.3 penalties provided for violations of Labor Code § 226(a). (If Labor Code § 226.3 is found not to apply to Defendants' violations of Labor Code § 226(a), Plaintiff alternatively will seek Labor Code § 2699(f) penalties.)

61. Plaintiff further seeks reasonable attorneys' fees and costs under Labor Code § 2699(g)(1).

Wherefore, Plaintiff prays for relief as set forth below.

VIII. <u>FOURTH CAUSE OF ACTION</u>

(LABOR CODE § 204 –

LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004)

62. Plaintiff repeats and realleges each paragraph above as though fully set forth herein.

63. California Labor Code § 2699(f) permits "aggrieved employees" to recover certain penalties on their own behalf and on behalf of other current and former employees.

64. Plaintiff is an "aggrieved employee" as that term is defined in the Labor Code Private Attorneys General Act of 2004 because she is a person who was employed by the alleged violators and against whom one or more of the alleged violations was committed.

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65. Plaintiff has met all the Labor Code § 2699.3 requirements to commence a civil action against Defendants for violations of Labor Code § 204.

66. By the actions alleged herein, Defendants have failed to comply with Labor Code § 204 as it relates to Plaintiff and the other aggrieved employees.

67. Therefore, Plaintiff, on behalf of and all current and former aggrieved employees, demands the penalties provided by Labor Code § 2699(f) for violations of Labor Code § 204.

68. Plaintiff further seeks reasonable attorneys' fees and costs under Labor Code § 2699(g)(1).

IX. FIFTH CAUSE OF ACTION

(LABOR CODE §§ 201-203 – LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004)

69. Plaintiff repeats and realleges each paragraph above as though fully set forth herein.

70. California Labor Code § 2699(f) permits "aggrieved employees" to recover certain penalties on their own behalf and on behalf of other current and former employees.

71. Plaintiff is an "aggrieved employee" as that term is defined in the Labor Code Private Attorneys General Act of 2004 because she is a person who was employed by the alleged violators and against whom one or more of the alleged violations was committed.

72. Plaintiff has met all the Labor Code § 2699.3 requirements to commence a civil action against Defendants for violations of Labor Code §§ 201-203.

73. By the actions alleged herein, Defendants failed to comply with Labor Code §§ 201-203 as they relate to Plaintiff and the other aggrieved employees.

74. Therefore, Plaintiff, on behalf of and all current and former aggrieved employees, demands the penalties provided by Labor Code § 2699(f) for violations of Labor Code §§ 201-203.

75. Plaintiff further seeks reasonable attorneys' fees and costs under Labor Code § 2699(g)(1).

Wherefore, Plaintiff prays for relief as set forth below.

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X. SIXTH CAUSE OF ACTION

(LABOR CODE § 2802 – LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004)

76. Plaintiff repeats and realleges each paragraph above as though fully set forth herein.

77. Labor Code § 2699(f) permits "aggrieved employees" to recover certain penalties on their own behalf and on behalf of other current and former employees.

78. Plaintiff is an "aggrieved employee" as that term is defined in PAGA because she is a person who was employed by the alleged violators and against whom one or more of the alleged violations was committed.

79. Plaintiff has met all the Labor Code § 2699.3 requirements to commence a civil action against Defendants for violations of Labor Code § 2802.

80. By their actions as alleged herein, Defendants have failed to comply with Labor Code § 2802 as it relates to Plaintiff and other aggrieved employees.

81. Therefore, Plaintiff, on behalf of and all current and former aggrieved employees, demands the penalties provided by Labor Code § 2699(f) for violations of Labor Code §§ 2802.

82. Plaintiff further seeks reasonable attorneys' fees and costs under Labor Code § 2699(g)(1).

Wherefore, Plaintiff prays for relief as set forth below.

XI. SEVENTH CAUSE OF ACTION

(WILLFUL MISCLASSIFICATION OF EMPLOYEES AS INDEPENDENT CONTRACTORS- LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004)

83. Plaintiff repeats and realleges each paragraph above as though fully set forth herein.

84. PAGA provides that, any provision of law under the Labor Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency for violation of the Labor Code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee pursuant to the procedures outlined in Labor Code § 2699.3.

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85. Plaintiff is an "aggrieved employee" as that term is defined in PAGA because she is a person who was employed by the alleged violators and against whom one or more of the alleged violations was committed.

86. Labor Code Labor Code § 226.8(a)(1) makes it unlawful for any person or employer to willfully misclassify an individual as an independent contractor. Labor Code § 226.8(a)(2) makes it unlawful for any person or employer to charge an individual who has been willfully misclassified as an independent contractor a fee, or make any deductions from their compensation, for any purpose, including for goods, materials, space rental, services, government licenses, repairs, equipment maintenance, or fines arising from the individual's employment when any of those acts would have violated the law if the individual had not been misclassified.

87. At all relevant times, Defendants violated Labor Code § 226.8 by willfully misclassifying Plaintiff and other aggrieved employees as independent contractors.

88. Plaintiff has met all of the Labor Code § 2699.3 requirements to commence a civil action against Defendants for violations of Labor Code § 226.8.

89. Therefore, Plaintiff, for herself and all current and former aggrieved employees, demands the maximum penalties provided by Labor Code §§ 226.8(b) and (c) and 2699(f) for violations of Labor Code § 226.8.

90. Plaintiff, for all current and former aggrieved employees, requests the Court order Defendants to place the notice required by Labor Code § 226.8(e) on SOS' websites.

91. Plaintiff further seeks reasonable attorneys' fees and costs under Labor Code § 2699(g)(1).

Wherefore, Plaintiff prays for relief as set forth below.

XII. EIGHTH CAUSE OF ACTION

(REQUIRING EMPLOYEES TO AGREE TO UNLAWFUL TERMS AND CONDITIONS – LABOR CODE PRIVATE ATTORNEYS' GENERAL ACT OF 2004)

92. Plaintiff repeats and realleges each paragraph above as though fully set forth herein.

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93. California Labor Code § 2699(f) permits "aggrieved employees" to recover certain penalties on their own behalf and on behalf of other current and former employees.

94. Plaintiff is an "aggrieved employee" as that term is defined in the Labor Code Private Attorneys General Act of 2004 because she is a person who was employed by the alleged violators and against whom one or more of the alleged violations was committed.

95. Plaintiff has met all of the Labor Code § 2699.3 requirements to commence a civil action against Defendants for violations of Labor Code § 432.5.

96. By the actions alleged herein, Defendants misclassified Plaintiff and other aggrieved employees as independent contractors and Defendants have failed to comply with Labor Code § 432.5 as they relate to Plaintiff and the other aggrieved employees.

97. Therefore, Plaintiff, for herself and all current and former aggrieved employees, demands the penalties provided by Labor Code § 2699(f) for violations of Labor Code § 432.5

98. Plaintiff further seeks reasonable attorneys' fees and costs under Labor Code § 2699(g)(1).

Wherefore, Plaintiff prays for relief as set forth below.

XIII. PRAYER FOR RELIEF

Plaintiff prays for relief as follows:

i. For civil penalties as specified by Labor Code § 2699(f) for Plaintiff and each current and former aggrieved employee for each violation of Labor Code §§ 226.7, 510, 1194, 1194.2, 1197, 1197.1, 1198 and 1199 (failure to pay wages, including minimum wages and overtime, for all hours worked) during the applicable limitations period preceding the filing of the Complaint and up to and including the present and until the date of compliance with the law;

ii. For civil penalties as specified by Labor Code § 2699(f) for Plaintiff and each current or former aggrieved employee for each violation of Labor Code §§ 226.2, 226.7, 1198 and 1199 (missed rest periods) during the applicable limitations period preceding the filing of the Complaint and up to and including the present and until the date of compliance with the law;

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iii. For civil penalties as specified by Labor Code § 226.3 for Plaintiff and each current or former aggrieved employee and on behalf of the State of California for each violation of Labor Code § 226(a) (failure to provide itemized wage statements) during the applicable limitations period preceding the original filing of the Complaint. (Should Labor Code § 226.3 be found not to apply to Defendants' violations of Labor Code § 226(a), Plaintiff alternatively seeks the civil penalties specified by Labor Code § 2699(f) for Plaintiff and each current or former aggrieved employee and on behalf of the State of California for each violation of Labor Code § 226(a) (failure to provide itemized wage statements) during the applicable limitations period preceding the original filing of the Complaint.)

iv. For civil penalties as specified by Labor Code § 2699(f) for Plaintiff and each current or former aggrieved employee for each violation of Labor Code § 204 (failure to pay wages in a timely manner) during the applicable limitations period preceding the filing of the Complaint and up to and including the present and until the date of compliance with the law;

v. For civil penalties as specified by Labor Code § 2699(f) for Plaintiff and each former aggrieved employee for each violation of Labor Code §§ 201-203 (failure to pay departing employees all wages due and owing) during the applicable limitations period preceding the filing of the Complaint and up to and including the present and until the date of compliance with the law;

vi. For civil penalties as specified by Labor Code § 2699(f) for Plaintiff and each current or former aggrieved employee for each violation of Labor Code § 2802 (unreimbursed business expenses) during the applicable limitations period preceding the filing of the Complaint and up to and including the present and until the date of compliance with the law;

vii. For civil penalties as specified by Labor Code § 2699(f) for each current and former aggrieved employee for each violation of Labor Code § 226.8 (willful misclassification of employees as independent contractors) during the applicable limitations period preceding the filing of the Complaint and up to and including the present and until the date of compliance with the law;

viii. For civil penalties as specified by Labor Code § 2699(f) for each current or former aggrieved employee for each violation of Labor Code § 432.5 (requiring employees to agree to unlawful terms and conditions) during the applicable limitations period preceding the filing of the Complaint and up to and including the present and until the date of compliance with the law;

ix. For reasonable attorneys' fees and costs as allowed by law, including Labor Code § 2699(g)(1) and Code of Civil Procedure § 1021.5

x. For all interest as required by Labor Code § 218.6 or any other applicable law; and

xi. For such other and further relief as the Court should deem proper.

Dated: June 9, 2025

Respectfully submitted,
KELLER GROVER LLP

By: ______________________________
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